

## FGM, Mandatory Reporting and the Complexity of Culture

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### *Introduction*

On the 5<sup>th</sup> of December 2014 the government published a [Consultation Paper](#) seeking views on how best to introduce a mandatory reporting requirement in cases of female genital mutilation (FGM). The consultation period remained open until January 12<sup>th</sup> with submissions now under review. In this post I share some thoughts on the recommendations proposed and revisit some of the key debates and scholarship critiquing the challenge, and complexity, of culture for gender equality. Debates about culture whether through voice, symbol or practice are never clear cut. They are always complex, always nuanced and, more often than not, divisive. That complexity is most apparent in the context of FGM and was most apparent in [last week's trial](#), where a doctor was found not guilty of FGM.

As readers will be aware FGM involves removing or 'cutting' all or part of a girl or women's external genital organs including the area around her vagina and her clitoris. There are no health benefits to this practice. Depending on the perspective of the practicing community or group, FGM is a cultural, religious, health, sexual, aesthetic or moral practice. FGM takes place to mark the traditional rite of passage from girlhood to womanhood, to help marry a girl off, to ensure virginity and modesty or to prevent genital disease. The negative consequences of the practice are well known. It is a practice that often leaves girls and women physically and mentally scarred for life. On a global scale, the [World Health Organisation](#) estimate that more than 125 million girls and women alive today have been cut. The practice is most prevalent in Africa and the Middle East.

From an England and Wales perspective, it has recently been [reported by the Health and Social Care Information Centre](#) that there were 1,279 active cases and 467 newly identified cases of FGM in September 2014. More broadly, [Equality Now and City University](#) estimate that approximately 10,000 girls aged under 15, who have migrated to England and Wales, are likely to have undergone FGM and are living with the impact of FGM.

This Consultation Paper can be seen as the next step in a series of reform and policy proposals designed to eliminate and prevent the practice of FGM in England and Wales. In July 2014, at the [Girl Summit](#), the Prime Minister and Deputy Prime Minister made a commitment to end FGM. The government is unequivocal that FGM is a criminal offence and an extremely harmful form of child abuse.

### *The Current Law on FGM*

FGM has been a criminal offence in England and Wales since 1985 under the [Prohibition of Female Circumcision Act](#). However, a loophole in that Act allowed for the taking of girls who

were settled in the UK abroad to have the practice of FGM carried out. The [\*Female Genital Mutilation Act 2003\*](#) sought to close that loophole by providing for extra territorial effect (section 4) as recommended by an All-Party Parliamentary Group on Population, Development and Reproductive Health reporting in 2000. The 2003 Act also increased the maximum penalty on conviction, on indictment, from 5 to 14 years imprisonment (Section 5).

Despite the amendment in 2003 it has remained extremely difficult to prosecute in this area. As in other jurisdictions the hidden nature of the crime and the fear of being judged as racist or being ostracised by one's community has deterred individuals from reporting on the practice.

### ***The Recommendations/Proposals:***

In introducing the Consultation Paper Theresa May, on behalf of the government, stated that the mandatory reporting of FGM 'will bring FGM out of the shadows and illustrate to perpetrators that they will be tracked down' (p.3). The Consultation Paper was set out in three parts: Parts A, B and C.

In Part A the government sought views on the scope of mandatory reporting. That is, whether the duty to report should apply to 'known', 'suspected' or 'at risk' cases. The government proposes that mandatory reporting should only cover 'known' cases of FGM. A known case is one that has been visually confirmed or disclosed to a professional by the victim. (para 2.6)

The approach recommended is narrow. It differs from the approach taken in Norway, for example, where there is a duty to report on 'suspected' and 'at risk' cases as well as known cases. As identified in the Consultation Paper, 'there are a number of risks with introducing a duty to report 'suspected' or 'at risk' cases. (para 2.4). It identified that it is extremely difficult to compile a definitive list of generic risk factors. Furthermore, introducing a mandatory reporting duty to report 'suspected' or 'at risk' cases could, it was argued, lead to a very wide interpretation of risk and as a corollary lead to certain communities being targeted. It could also lead to the system seeing a sharp increase in referrals and a disproportionate focus on FGM.

Recent research, from Lien and Schultz (2014), on [\*'the risky legal framework' of mandatory reporting in Norway\*](#) draws attention to the negative implications of a wider 'duty to avert' approach. By drawing on one Norwegian case, where a teacher suspected that FGM had been carried out on a Somali girl in his class, they discuss the conflict that arises between the duty to avert FGM and the law against discrimination. In that particular case it was found that FGM had not taken place and that family relations were positive and harmonious. The father of the girl then filed a complaint with the Ombudsman for Discrimination arguing that the girl was examined purely because she was from Somali. The Ombudsman found in his favour. The child welfare service appealed the decision to the Discrimination and Equality Tribunal who found in their favour. Lien and Schultz conclude that the law in Norway 'is questionable' both in principle and practice (p.208). They call for a reduction on the pressure on employees to report and call for greater cultural and contextual knowledge on FGM to be given to care givers. (p.208).

With regard to the reporting of ‘known’ cases in England and Wales, the government proposes that the reporting duty be applied to under 18s only (para 2.10) and on the question of who should report, the government proposes that the new duty is placed on healthcare professionals, teachers and children’s social care staff. (para 2.18)

In Part B, the government addressed the issue of sanctions for failing to report. Two options were set out including an individual being placed on a ‘barred’ list (unable to work or volunteer with children or vulnerable people) by the [Disclosure and Barring Service](#) DBS (para 3.4) or a disciplinary sanction being imposed by the relevant professional body (para 3.6). Here, the government sought particular views on what sanctions and what level of sanction should be placed on individuals who fail to report.

In considering the proposals put forward regarding sanctions and more generally the duty to report it could be argued that the measures being proposed are indicative of the government’s [‘new’ approach to fighting crime](#) involving a shift of power from Whitehall to local communities to fight crime. Undeniably a multi-agency and targeted approach is required in an area such as this but we, as a society, need to be cognisant of the potential negative impacts of this ‘big brother’ type approach. Is it reasonable to place this level of burden to report and potential sanction on healthcare professionals, teachers and social care staff? Will the introduction of mandatory reporting in this area lead to further division and further alienation and, indeed, the essentialisation of our immigrant population? Mandatory reporting, it is argued, could lead to a reluctance by individuals to use and avail of the key services they require for fear of the consequences that it may have on family life.

Part C briefly addressed statutory guidelines. The position of the government is that statutory guidelines on FGM would be aimed at all persons who exercise public functions in relation to safeguarding. (para 4.3)

The government hope to publish a report on the submissions received sometime in 2015. For updates see [here](#).

### ***Some thoughts on the complexity of culture and gender equality...***

As someone who researches on culture and identity rights and advocates, on the whole, for the protection of one’s culture, FGM inevitably brings forth a challenge and raises questions as to how the right to culture can, in a real and meaningful way, be reconciled with the right to gender equality? More specifically how can Article 27 of the [ICCPR](#) (protecting minority rights), Article 15 of the [ICESCR](#) (recognising rights to cultural life) be compatible with Article 5 of [CEDAW](#)? Article 5 of CEDAW provides that:

*States Parties shall take all appropriate measures:*

*(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

In seeking to eliminate ‘prejudices and customary’ practices we are reminded of the work of the late Susan Okin who asked the provocative question [‘is multiculturalism bad for women?’](#) in 1999. She did so in the context of the consideration of practices such as FGM. Okin concluded that it was – bad for women, that is. In her view women:

*‘...might be much better off if the culture into which they were born were either to become extinct (so as its members would become integrated into the less sexist surrounding culture) or, preferably, to be encouraged to alter itself so as to reinforce the equality of women.’ (1999:22/23)*

For Okin, the multiculturalist project of protecting the rights of minority groups, often imposing ‘dangerous’ patriarchal rights, undoes the results of the feminist struggle for gender equality. I admire Okin’s work and too recognise, as with most of western society it seems, that FGM is a form of violence against women and girls and it does reflect a deep-rooted inequality between the sexes. It constitutes an extreme form of discrimination against women. The practice violates a woman’s right to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment and the right to life when the procedure results in death. When FGM is carried out on young girls it is a violation of the rights of children.

But then I ask, who am I to judge? By agreeing with Okin am I failing to challenge the false universality of so called western feminist liberalism? To agree with Okin, as noted by [Siobhan Mullally](#) further entrenches a “them and us”; the liberal and the so called illiberal. (Mullally, 2010:1) And though this point has been made elsewhere, we must not lose sight of the ‘increasing commodification of the female body and the easy availability of cosmetic surgeries’ for the so called ‘liberated First world woman’ raising questions about the normative requirements of gender equality and the cultural context (Mullally, 2010: 2). Further still, Judge Tulkens, dissenting in [Şahin v Turkey](#), reminds us that ‘equality and non-discrimination are subjective rights which must remain under the control of those who are entitled to benefit from them’(para 12).

Within the Consultation Paper it stated that the government is interested to hear from victims of FGM and community groups and leaders. That invitation is to be welcomed but I do wonder why, if the government sought to have a ‘full’ discussion on this why the consultation process remained open for a mere 5 weeks (see p.5). Though I appreciate that a policy drive to eliminate FGM is well intended, I do hope that the required time will be taken to consider whether mandatory reporting is a suitable next step. In this context too it is hoped that discussions are raised about projects which have sought to provide alternatives to FGM within community groups; projects that could be supported and encouraged by the government. In [Kenya](#), for example, NGOs have worked with communities to encourage an ‘alternative rite to passage’ or circumcision through words for young girls (p.41).

We have, as noted by the brief discussion here, the opportunity to learn from elsewhere. Yes, cultural issues are complex. FGM is complex! The government needs to thread carefully and

take the time that is required to develop a responsible and rational policy system and work with communities and not against them.